

Winter 2003

# Finding the Balance

*A Publication of the Indiana Land Resources Council*

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## Farmland Protection is Critical to Our Future

*By Lt. Governor Joe Kernan, Chair, Indiana Land Resources Council*

The Hoosier Farmland Preservation Task Force (HFPTF) was created in 1997 to address the conversion of farmland to other uses.

A diverse group of men and women, the HFPTF quickly recognized the issue was much more complicated than just the protection of farmland. It is clearly a balance between farmland protection, open space and development.

The Indiana Land Resources Council (ILRC) was created as a direct result of the concern about the loss of farmland in Indiana. Of the nine recom-

In this issue of *Finding the Balance*, we will take a look at farmland protection in Indiana. At the forefront is the 2002 Farm Bill's Farm and Ranchlands Protection Program (FRPP). This voluntary program offers a tool to landowners who want their land to remain in agriculture (page 2).

To understand how the FRPP works, Mark Thornburg, chief counsel, Indiana Farm Bureau, Inc., explains the concept of conservation easements and how the purchase of development rights from a piece of property can ensure the land

will remain in agriculture (pages 3-4). In addition, you will learn about a motion passed by the ILRC that will complement the federal program at the state level (page 5).

How important is farmland protection in Indiana? There are many answers to this question, depending

on where you sit. Read about one perspective from ILRC member Dr. Eric Damian Kelly, Ball State University (page 4).

What are land trusts and how do these organizations fit into the farmland protection

picture in Indiana? The ILRC takes a look at the growth of the Indiana Land Protection Alliance in an article by Maren McGrane, land resources/brownfields specialist (page 5).

One of the biggest challenges we face is the lack of public understanding about the importance of farmland protection to Indiana's future. Learn about the American Farmland Trust's efforts to explain the importance of agriculture in Indiana through the development of a video that focuses on Indiana agriculture (page 6).

In our *Did You Know* feature, find out what Elkhart County is doing to address recent trends in land conversion with multiple levels of agriculture zoning (page 6).

Finally, take a look at the training highlights (page 7) to learn about two different sessions planned for March.



*Lt. Governor Joe Kernan*



*One of the biggest challenges Hoosiers face is the lack of public understanding about the importance of farmland protection.*

mendations in the 1999 HFPTF report, three relate directly to agricultural land and several others indirectly include impacts to rural Indiana.

# An Overview of the Federal Farmland Protection Program

By Joe Tutterrow, Executive Director, Indiana Land Resources Council

**T**he Federal Farm and Ranchlands Protection Program (FRPP) was authorized by the Food Security Act of 1985. Nine years later, the 1996 Farm Bill allocated \$35 million for the program.

The growing concern about the conversion of farmland on a national scale resulted in a significant increase in funding for the program under the 2002 Farm Bill.

Under the current appropriation of \$597 million which runs through 2007, there is \$100 million available this year on a competitive basis to states working to preserve farmland. Below are key elements of the farmland protection program:

- It is a voluntary program, available in all 50 states on a competitive basis.
- It provides matching funds to state, tribal or local governments and to qualifying local non-government organizations.
- Funding is used to purchase conservation easements on productive farmland to keep land in agriculture.
- Since 2001, more than 108,000 acres have been protected in 28 states. Indiana did not participate in the program until 2002.

## Program Requirements

The land must be privately owned and meet specific criteria including:

- A minimum of 50% of the land must meet minimum soil specifications as defined by the U.S. Department of Agriculture; **or**, the property must contain historical or archaeological resources that qualify for the state or national register.
- The property must be covered by a conservation plan developed by the local office of the USDA Natural Resources Conservation Service.
- The property must be large enough to sustain agricultural production.

In addition:

- The state must have an existing farmland protection program and plan.
- The state conservationist must approve the proposals, with advice from the state technical committee.
- A minimum 30-year commitment is required, with preference given to easements that are perpetual (continuing for ever; valid for all time).

## Funding

The maximum federal share is 50% of the appraised fair market value of the conservation easement. A land-



*Under Indiana's Farmland Protection Program, three Kosciusko County farms were approved in 2002 for conservation easements.*

owner donation, not to exceed 25% of the appraised fair market value of the conservation easement, is also allowed. At a minimum, 25% of the appraised fair market value of the conservation easement must be provided as a cash match.

## Current Status

The Indiana Farmland Protection Technical Advisory Committee formed in early 2002 and developed the state's first Farmland Protection Plan. As a result of this effort, three farms in Kosciusko County were approved in 2002, which brought approximately \$900,000 of federal funding to the state. The match was provided by a local land trust

for two of the properties. The Indiana Division of Fish and Wildlife was able to identify a small amount of dedicated funds to use as a

match for the third property. All three properties are currently in the final stages of review.

The 2003 Indiana plan has been finalized. We are waiting on final decisions at the national level. Indiana is prepared to respond when the program announcement is released in the *Federal Register*. The biggest challenge will be to identify local sponsors and sources of matching funds.

*For more information on this program contact Joe Tutterrow at [jtutterrow@commerce.state.in.us](mailto:jtutterrow@commerce.state.in.us), or Dwayne P. Howard, U.S. Department of Agriculture Natural Resources Conservation Service, by email at [dwayne.howard@in.usda.gov](mailto:dwayne.howard@in.usda.gov).*

# Conservation Easement Overview

*Excerpts from a White Paper by Mark Thornburg, Staff Attorney  
Indiana Farm Bureau, Inc.*

**C**onservation easements are just one tool available to protect open space, farmland, forestland and other valuable land based resources. Conservation easements are voluntary agreements between a landowner and a governmental or non-profit entity that limit land to specific uses and thus limit the amount of development that can occur. They are legally recorded deed restrictions that “run with the land” and can be obtained voluntarily through donation or purchase from the landowner.

The preservation of land can be accomplished in a variety of ways. Conservation easements can be an expensive way of managing sprawl and, where used, are generally part of an overall land use package that includes many other techniques, including zoning, comprehensive planning, fee simple purchases, tax incentives, etc. A conservation easement is the legal mechanism by which Purchase of Development Rights (PDRs) and Purchase of Agricultural Conservation Easement (PACE) programs can occur. The term “development right” refers to a stick in the bundle of property rights that a landowner has that is most often severed when a conservation easement is placed on his or her property.

## ***Uniform Conservation Easement Act (UCEA)***

At least 21 states have adopted the Uniform Conservation Easement Act (UCEA) in some form. Twenty-three states have adopted their own legislation. Indiana adopted the UCEA in 1984. Under the UCEA, nonprofit organizations, as well as governmental agencies can own conservation easements.

The UCEA has made conservation easements more certain devices by eliminating several common law impediments. Indiana’s version of the law does contain language that the law “does not affect the power of a court

to modify or terminate a conservation easement in accordance with the principles of law and equity, or the termination of a conservation easement by agreement of the grantor and the grantee.”

This language suggests the survival of common law principles regarding the circumstances under which such an easement can be extinguished. Lack of enforcement of easement conditions and the impossibility of being able to accomplish the easement purpose would be the primary ways this would occur. Conservation easements could also be terminated or modified by entities condemning the land through eminent domain for purposes inconsistent with the purposes of the conservation easement.

## ***Tax Benefits***

Grantors of conservation easements can receive tax advantages for donating easements as charitable gifts by meeting Internal Revenue Code Section 170(h) criteria. This is referred to as a “qualified conservation contribution.” The property cannot be subject to a mortgage or lien that could defeat the interest to be preserved. The contribution must be for a “conservation purpose.” That purpose can be for the preservation of land areas for outdoor recreation, education,



the preservation of habitat, and the preservation of open space for the scenic enjoyment of the public. Farmland and forests are recognized in this list. Historic land areas or certified historic structures likewise qualify.

## ***Easement Valuation***

The value of the easement is generally the fair market value





of the property minus its value with the conservation easement restrictions in place, as determined by a qualified appraiser. Easement compensation can be in the form of a single lump sum payment or pursuant to an installment purchase contract spread over a term of years. The seller also may sell at a bargain sale and claim a charitable gift for the bargain portion.

### **Purchase of Development Rights (PDRs)**

PDRs are essentially the use of conservation easements to acquire the rights to develop a piece of property. The sale is generally to a governmental agency, land trust or to another nonprofit organization. In Indiana, the authority exists through the UCEA. General revenues can be used to purchase PDRs.

Conservation easements appear to be a flexible non-regulatory way to manage sprawl when used as part of an overall

development and growth management strategy. They are voluntary, keep land in private hands and on the tax rolls, provide compensation to the landowner for development potential. They can be tailored individually and have tax advantages for the landowner. However, they are an expensive way to accomplish land use goals. They also represent a long-term monitoring and enforcement obligation on the holder of the easement, which may or may not be a governmental entity. In and of themselves, conservation easements do not guarantee that the land will be used for the conservation purposes of the easement, BUT they do provide a valuable option for landowners to use to protect their land.

*Thornburg can be reached at Indiana Farm Bureau Inc., (317) 692-7849, or at [mthornburg@infarmbureau.org](mailto:mthornburg@infarmbureau.org).*

## **The Agricultural Land Resource**



*By Dr. Eric Damian Kelly, ILRC Member and Professor, Urban Planning, Ball State University*

■ **A**gricultural land preservation continues to be a topic of discussion in Indiana – but it is not the focus of much action. Although some urban residents seem to believe that a primary job of farmers is to preserve agricultural land, the real job of farmers is to conduct a business using the land resource. As long as

that business remains only marginally profitable in an average year, there will be great temptations for many farmers to sell the resource and apply their labor and capital to other enterprises.

Over the long-term, the preservation and effective use of this resource depends on a viable agricultural economy, which is in larger measure an issue of national policy.

There are, however, things that we could do in Indiana to limit the damage to our land resource. Those include:

■ **Restrictions** on “stripping out” lots along county roads, consuming the edges of otherwise productive fields and turning what once were farm-market roads into commuter lanes for SUVs and minivans.

Requiring that sub-dividers actually be developers who create streets and entire developments would reduce the stripping out and make it more difficult to engage in marginal subdivision activity.

■ **Elimination** of subdivision “exemptions” for two-acre, five-acre and 10-acre lots.

Although it may be appropriate to allow a variance or other means through which a farmer can sell a home site to a family member, allowing farmers, realtors and auctioneers to create massive land divisions that are not subject to subdivision regulations makes it easy to chew up farmland and creates long-term fiscal burdens on local government.

■ **Elimination** of incentives for large lots.

Housing 100 families on one-acre lots uses 100 acres of land; housing them on five-acre lots requires 500 acres – the difference is more than half a section of land. Thus, zoning districts and subdivision ordinances that make it easy to create large lots encourage wasting land.

■ **Restrictions** on the use of septic tanks for subdivisions.

If most new development took place near existing communities, where it could be connected to sewers, there would be far less scattered development encroaching into agricultural areas. Most of these leapfrog subdivisions are possible only because of the use of septic tanks. Recent studies indicate that a large percentage of systems used for these homes will fail over a 10-year to 15-year pe-

riod, thus creating water quality and land use problems.

■ **Persuading** state agencies to take the land use issue seriously.

Every new interstate highway, state prison, or college campus in a greenfield area leads to additional development and creates pressure for land conversion. Such major investments by the state should be made only after careful consideration of the secondary land use and impacts of such investments.

None of these proposals will make agriculture economically stronger, but they will reduce the supply of marginal, non-agricultural buyers for agricultural land.

*For additional information on this topic, contact Kelly at [ekelly@bsu.edu](mailto:ekelly@bsu.edu).*

## ILRC Approves Motion To Develop State-Level Ag Land Preservation Program

■ **I**LRC member Don Strietelmeier, representing Indiana Soil and Water Conservation Districts, recently developed a proposal to “establish a voluntary Indiana

ag land preservation program.” The proposal was presented at the council’s November meeting and received unanimous support.

This program would compliment or be compatible with the Federal Farm and Ranchlands Protection Program in Indiana. Key components of the state program could include:

- Incentives for farmers to protect their land from conversion to other uses,
- Protect viable agriculture,

- Be based on well defined criteria,
- Require a contract with clearly defined terms and conditions,
- Establish contract conditions that would run with the land and must be recorded,
- Require property be in a designated agriculture area,
- Require land not be located in a highly developed area or isolated from other ag land at the time of application, and

- Be compatible with a local comprehensive plan.

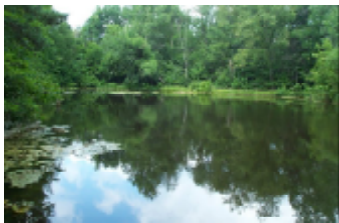
A subcommittee has been created to develop language over the next year to present to the full council for review. Once approved, recommendations will be submitted to the legislature for consideration.

If you are interested in more information on this initiative, contact the ILRC at (317) 234-5262, or by email at [jtutterrow@commerce.state.in.us](mailto:jtutterrow@commerce.state.in.us).

## The Role and Status of Land Trusts in Indiana

*By Maren McGrane, Land Resources/Brownfields Specialist, Indiana Land Resources Council*

■ **L**and trusts are private, nonprofit conservation organizations formed to protect natural resources



*Koeneman Lake is part of the Clear Lake Township Land Conservancy — a land trust protecting acreage in Steuben County.*

such as productive farm and forestland, natural areas, historic structures and recreational areas. Land trusts educate the public about the need to conserve

land. Some provide land use and estate planning services to local governments and individual citizens.

Land trusts purchase and accepts donations of conservation easements in order to protect land from commercial, residential or industrial development. While some land trusts are just beginning to purchase conservation easements, others have either purchased or accepted the donation of conservation easements for years.

For example, the Sycamore Trails RC&D recently recorded its first conservation easement of approximately 250 acres. Located near Terre Haute, this land is permanently protected from residential, commercial and industrial development. Other land trusts have been able to do the same, and as a result are protecting hundreds of acres of land across the state.

The Indiana Land Protection Alliance (ILPA) is an organization representing many land trusts in the state. The ILPA is charged with “facilitating the direct protection of land for its natural, recreational, scenic, historic or productive value by increasing the effectiveness of land protection organizations in Indiana.”

The primary goals of the ILPA are to:

- 1) Increase communication between land trusts,
- 2) Facilitate education of members, staff and the public,
- 3) Increase awareness of the benefits of land conservation, and
- 4) Support legislation benefiting land protection.

Membership is open to any individual or organization that supports land protection. The Indiana Land Resources Council (ILRC) has been a member for two years.

The ILRC recently conducted an inventory of established land trusts in Indiana. There are 28 land trusts covering a broad range of landscapes. For instance, the Little River Wetlands Project in Fort Wayne facilitates the restoration of wetlands in the Little River watershed. On a larger scale, the NICHES Land Trust preserves areas of land from small green spaces to large nature preserves throughout 12 Indiana counties.

The Indiana Chapter of The Nature Conservancy developed a color-coded state map to show the geographic regions served by land trusts. The list of Indiana land trusts and the color-coded map are both on the ILRC Web site at [www.in.gov/oca/ilrc/whatsnew/index.html](http://www.in.gov/oca/ilrc/whatsnew/index.html) (under “Hot Topics”). McGrane can be reached at [mmcgrane@commerce.state.in.us](mailto:mmcgrane@commerce.state.in.us).

## Public Awareness And Education Focus of USDA Grant

There has been a growing interest in the development of a farmland protection video created specifically for Indiana. Groups of concerned citizens from across the state have been asking for this tool that would provide a consistent message, explaining the important role of farming in Indiana.

In the spring of 2002, the Central Great Lakes office of the American Farmland Trust received a USDA block grant in collaboration with the Indiana Farm Bureau Inc., Indiana Land Resources Council (ILRC) and the Purdue Cooperative Extension Service. Two elements of the proposal titled, *Protecting Indiana's Agricultural Heritage*, were approved:

- 1) The development of a video that promotes the positive impacts of Indiana agriculture and examines farmland production strategies.

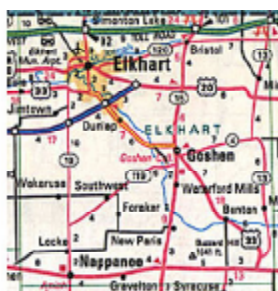
The video will be available for public viewing in March, as part of video seminar project **Indiana Land Use Update**. Information about this education program can be found on page 7 of the newsletter.

- 2) The coordination and organization of another Ultimate Farmland Preservation Tour for policy makers and farmers. This is the same tour of Maryland, New Jersey and Pennsylvania that has successfully educated over 1,500 participants during seven previous trips since 1999.

The **Ultimate Farmland Preservation Tour** is scheduled for June 19-23, 2003. The tour will again travel through Maryland, Pennsylvania and New Jersey. It provides an in-depth, first-hand educational experience designed to empower community and state leaders to address land use trends in their own states. More information will be available at the ILRC Web site: [www.in.gov/oca/ilrc](http://www.in.gov/oca/ilrc).

## Did You Know?

### Elkhart County Adopts Ag Zoning



There is a lot of agricultural production in Elkhart County. The county ranks first in Indiana in the number of dairy cattle with a 2002 inventory of 19,800 milk cows.

Elkhart County also has a lot of people. The population increased from 156,198 in 1990 to 184,186 in 2001 — a 9.7% increase over the 11 year period.

Farmland and open space use — and how development impacts it — is an issue the county is working on. Elkhart County officials created three levels of agricultural districts that recognize the changes taking place in rural Indiana. These three districts are:

- A-3) Farmland Preservation District,**
- A-4) Confined Feeding Protection District,** and
- A-5) Intensive Livestock Operation District.**

All three districts were created to:

- 1) Enhance right-to-farm protection,
- 2) Encourage community recognition of the needs of the agricultural community, and
- 3) Promote agricultural economic development.

In addition, a stated purpose of the **A-4 Confined Feeding Protection Districts** would be to promote coexistence with residential neighbors.

The **A-5 District for Intensive Livestock Operation** also would address extremely large confined feeding operations, and recognize certain health, safety and general welfare needs of Elkhart County residents.

For more information on Elkhart County's efforts, contact ILRC member, and Elkhart County Commissioner, David Hess at [CCommissioners@elkhartcounty.com](mailto:CCommissioners@elkhartcounty.com).

## Indiana Farming Trends

Between 1900 and 2000, Indiana went from an estimated 22 million acres of farmland (land in farms) to approximately 15 million acres. This represents a 35% loss of farm acreage, or an average of 65,000 acres every year. From 1900 through 1995, the number of Indiana farms dropped 72%, from 222,000 to 62,000.

During the decade of the 1990s, Indiana's population grew by 9%. During this same period of time, our urban lands grew by 18%, while the loss of farmland averaged about 80,000 acres annually. This pattern of growth and the consequences of these trends are potentially more significant than the amount of farmland being converted. As we continue to grow, the

competition for land will become even more focused.

Recent studies indicate that the importance of rural amenities transcend the current focus on the loss or conversion of farmland. Indiana's history and rural character define who we are. Hoosiers clearly care about our past; we should not ignore our heritage.



## Finding the Balance

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## Acres in Indiana Protected by Land Trusts

As of July, 2002, there were 25 active Indiana land trusts.

These 25 land trusts protected:

- 29,357 total acres,
- 4,453 acres with conservation easements, and
- 24,904 acres by (fee simple) ownership.

Since this study was completed by the Indiana Land Resources Council, three additional land trusts have been created.

## Land Use Update – Video Seminar Series

### Session 1 – Farmland Protection

#### Date

Thursday, March 6<sup>th</sup> at 7 p.m. EST.

#### Location

Various sites around the state (to be determined).

#### Registration Deadline

There is no charge for this session. Pre-registration is suggested so site coordinators



can anticipate the number of participants. Additional information (including registration) is available at <http://www.in.gov/oca/ilrc/pringVideoSeries.pdf>.

## Nitty Gritty Work of Land Use Planning Training Sessions Scheduled

### Session 1 – Seymour

#### Date

Wednesday, March 12<sup>th</sup>, registration at 8:30 a.m., program is from 9 a.m. to 3 p.m.

#### Location

First Methodist Church  
201 East Third Street (corner of 3<sup>rd</sup> and Ewing Streets)  
Seymour

#### Directions

From I-65 take the Hwy. 50 exit west into Seymour. Turn north (right) on Hwy. 11 (Broadway St.) to 3<sup>rd</sup> street and turn west (left).

#### Registration Deadline

Registration Deadline – Friday, March 7<sup>th</sup>

### Session 2 – Rensselaer

#### Date

Wednesday, April 9<sup>th</sup>

#### Location

Jasper County Fairgrounds, Community Building  
State Road 114  
Rensselaer

#### Directions

The fairgrounds is located 2 miles east of I-65 or 1 mile west of Rensselaer on the south side of State Road 114 in Jasper County.

#### Registration Deadline

Registration Deadline – Friday, April 4<sup>th</sup>

### Registration Information

Registration information for these training programs is available on the ILRC Web site at <http://www.in.gov/oca/ilrc/springNitty.pdf>. Registration is \$60.00, payable to the: **Planning Commissioner Training** or **Ball State University**. Lunch is included.

#### Mail registration and payment to:

Indiana Land Resources Council — Training  
150 W. Market St., Suite 414  
Indianapolis, IN 46204